



whether a stay will simplify the issues and the trial of the case; and (3) whether discovery is complete and a trial date has been set.” *Xerox Copr. v. 3Com Corp.*, 69 F.Supp.2d 404, 406 (W.D.N.Y. 1999).

3. The Court exercises its discretion to deny the stay after examining all three factors.

4. First, the undue prejudice to Plaintiffs would be substantial. An *inter partes* reexamination could take more than five years if the parties fully exhaust their appeal rights. The parties are direct competitors and this delay would cause Plaintiffs to lose substantial profits as well as goodwill in the market. The goodwill lost during the reexamination proceedings could be difficult to measure and thus difficult to compensate fully with money damages after trial. *See Nidec Corp. v. LG Innotek CO.*, 2009 WL 3673433, at \*4 (E.D. Tex. Apr. 3, 2009); *Tesco Corp. v. Weatherford Int’l, Inc.*, 599 F.Supp.2d 848, 851 (S.D. Tex. 2009) (“Where the parties are direct competitors, a stay would likely prejudice the non-movant.”).

5. Second, while a stay might simplify the issues for trial, the Court finds that this factor does not weigh heavily. The Court may decide all of the issues of validity that are presented to the Patent and Trademark Office. Further, if the Court did stay the action, it most likely would have to decide some of these issues years down the road, when the case is old, and the information no longer fresh.

6. Third, while substantial discovery remains, the parties already conducted considerable discovery, the case was scheduled for claim construction briefing, and the Court plans to try the case on November 7. Further, the Court considers Defendants’ delay in filing for a reexamination and a stay. Despite this litigation having been filed in October 2009, Defendants did not request an *inter partes* reexamination on the ‘655 patent until June 25,

2010, and delayed until November 3, 2010, and January 14, 2011, to file requests for reexamination of the '475, '382 and '820 patents.

Therefore, for the foregoing reasons:

IT IS THIS 4<sup>th</sup> day of February, 2011, hereby

ORDERED that Defendants' motion to stay this action (Doc. No. 67) is DENIED.

/s/ Garrett E. Brown, Jr.  
GARRETT E. BROWN, JR., U.S.D.J.